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APPELLANT'S REPLY BRIEF

POINT RELIED ON

The Motion Court clearly erred in overruling Mr. Lyons' request to reopen his Rule 29.15 proceedings because said action of the Court violated applicable provisions of Missouri law as interpreted by this Court, and further violated Mr. Lyons' rights to enjoy due process of law and effective assistance of counsel, and be free from cruel and unusual punishment, in derogation of the 6th, 8th and 14th Amendments to the Constitution of the United States and Article I, Sections 10, 18(a) and 21 of the Constitution of the State of Missouri in that

1. during Mr. Lyons trial, direct appeal, and Rule 29.15 proceedings, Mr. Lyons did not have the mental capability to understand the proceedings against him or to assist in his defense,
2. Mr. Lyons suffered prejudicial ineffective assistance of appellate counsel when his appointed appellate attorney failed to raise this compelling issue on direct appeal despite the fact that the issue was properly preserved,
3. Mr. Lyons was abandoned by appointed post-conviction counsel in light of counsel's utter failure to even

consider or raise issues of ineffective appellate assistance during Mr. Lyons Rule 29.15 proceedings.

SUMMARY OF PREVIOUS BRIEFINGS

1. Summary of Appellant's Brief

In his Appellant's Brief, Mr. Lyons argued that the Motion Court clearly erred in not permitting Mr. Lyons to reopen his Rule 29.15 proceedings. Mr. Lyons explained that he had been completely abandoned by post-conviction counsel with respect to the entire category of claims related to ineffective assistance of direct appeal counsel. Just before Mr. Lyons' post-conviction petition was filed, this Court modified its post-conviction procedures. Prior to the change, claims of ineffective assistance of direct appeal counsel were handled, not through 29.15 proceedings, but via Motions to Recall the Mandate filed directly with the appellate courts. The change mandated that such claims of ineffective assistance of direct appeal counsel be brought in a Rule 29.15 proceeding. Lyons' appointed post-conviction counsel did not register this change at the time. As a result, appointed post-conviction counsel never undertook any of the duties for this

entire category of post-conviction issues.

Because Mr. Lyons was so abandoned by post-conviction counsel, no post-conviction counsel examined the appellate record to detect the obvious, grievous errors committed by Lyons' direct appeal counsel. Mr. Lyons had been forced to trial and direct appeal while not mentally competent. The issue regarding Mr. Lyons' incompetence to proceed to trial was properly and obviously preserved for appeal during trial proceedings. In light of Mr. Lyons' incompetence, and the failures of the Trial Court in properly addressing that incompetence, this was an issue upon which Lyons should have prevailed in direct appeal proceedings. However, due to oversight or mistake by direct appeal counsel, the matter was not raised upon direct appeal. Direct appeal counsel fully admits that there was no strategy behind this blunder.

2. Summary of Respondent's Brief

In defending the Motion Court's decision not to reopen the 29.15 proceedings, the State initially argues that Lyons' challenge against the failures of post-conviction counsel should be considered a non-actionable

allegation of error of post-conviction counsel, rather than an abandonment by post-conviction counsel. Respondent's Brief, p. 12-16. The State goes on to argue, in the alternative, that even if this Court agrees that Lyons was abandoned by post-conviction counsel, the Motion Court was still right in denying the Motion to Reopen, reasoning essentially that Lyons would not have prevailed on appeal upon the issue of his incompetence. Respondent's Brief, p. 17-27.

COMPLETE FAILURE BY APPOINTED POST-CONVICTION COUNSEL TO DISCHARGE NEW DUTIES COMMANDED UNDER AMENDED RULE 29.15 WAS NOT A MERE ERROR BY COUNSEL, AS ARGUED BY RESPONDENT, BUT RATHER AMOUNTED TO AN ABANDONMENT

1. As State concedes, Lyons is entitled to relief if he was abandoned by post-conviction counsel

In its response, the State concedes, as it must, that if a petitioner like Lyons can establish that he was abandoned by post-conviction counsel, he should be permitted to reopen his Rule 29.15 proceeding, even years later. Respondent's Brief, p. 12-13; ***State ex rel. Nixon v. Jaynes***, 63 S.W.3d 210, 217-218 (Mo.banc 2001). The State does seem to invite this Court to be

distracted by the fact that Mr. Lyons' claim of abandonment by direct appeal counsel was not previously raised by either Lyons' post-conviction trial counsel or Lyons' post-conviction appellate counsel. Respondent's Brief, p. 13, fn. 3. However, this is nothing but a distraction, since this Court has made clear that the critical question is not when the claim of abandonment is made, but rather whether the claim of abandonment has merit. ***State ex rel. Nixon v. Jaynes***, supra.

2. Because post-conviction counsel failed to take on duties related to an entire category of claims, those of ineffective appellate assistance, he abandoned Lyons with respect to that category of claims

The State asks that this Court categorize Lyons' claim as Lyons' mere faulting post-conviction counsel for "failing to raise an additional claim in his amended post-conviction motion." Respondent's Brief, p. 14. That would then pave the way for the State to argue, as it does, that Lyons makes merely "an unrecognizable claim of ineffective assistance of post-conviction counsel." Respondent's Brief, p. 16.

In making this argument, the State correctly

recognizes the admission made by post-conviction counsel that he failed to identify and raise an issue he now understands to be clearly meritorious (L.F. 36-37). What the State does not go on to add is that the failure by post-conviction counsel owed to counsel's complete failure to discharge the new duties assigned to him under amended Rule 29.15 (L.F. 36-37).

Prior to the amendment to Rule 29.15, an entirely separate action, the Motion to Recall the Mandate, was reserved for the raising of issues of ineffective appellate assistance. ***Reuscher v. State***, 887 S.W.2d 588, 591 (Mo.banc 1994). Amended Rule 29.15 placed upon post-conviction counsel appointed under Rule 29.15 the new, additional class of duties, to raise issues with respect to ineffective appellate assistance. ***Becker v. State***, 77 S.W.3d 27, 28 (Mo.App.E.D. 2002). Appointed post-conviction counsel has candidly admitted that this whole class of duties was never discharged in connection with Mr. Lyons' case (L.F. 36-37). Thus, these issues were not merely missed by a Counsel who fully undertook his duties with regard to all possible categories of claims. Rather, no effort of any kind was ever made for

this entire category of issues.

In 1991, when this Court first broached the subject of abandonment of post-conviction counsel, it made clear that the question at bottom was "...one of determining whether appointed counsel complied with the provisions of Rule 29.15(e)." ***Luleff v. State***, 807 S.W.2d 495, 497 (Mo.banc 1991). In the cases relied upon by the State, this Court found that, in each case, the record amply demonstrated that appointed counsel took on all of the duties assigned to post-conviction counsel by Rule 29.15(e), and that each Movant was thus complaining, not about a failure by post-conviction counsel to undertake duties under Rule 29.15(e), but rather an alleged failure by post-conviction counsel to effectively discharge the duties which had been undertaken. ***Barnett v. State***, 103 S.W.3d 765, 773-774 (Mo.banc 2003); ***Winfield v. State***, 93 S.W.3d 732, 738-739 (Mo.banc 2002).

Here, on the other hand, the record is plain that Lyons' post-conviction Counsel admittedly failed to ever undertake the express duties, pursuant to Rule 29.15(a) and (e), with respect to claims of ineffective appellate

assistance (L.F. 36-37). Such a complete failure to shoulder duties with regard to an entire category of post-conviction counsel's responsibility is akin to another form of abandonment, the failure to timely file a necessary amendment. ***Sanders v. State***, 807 S.W.2d 493, 494-495 (Mo.banc 1991).

For these reasons, it is clear that, here, Lyons was not merely ineffectively served by post-conviction counsel, but was in fact abandoned with respect to the entire category of claims of ineffective appellate assistance.

MR. LYONS IS ENTITLED, AT THE LEAST, TO AN OPPORTUNITY TO FULLY DEVELOP HIS CLAIMS OF INEFFECTIVE APPELLATE ASSISTANCE

The State suggests that, even if Mr. Lyons was deemed by this Court to have been abandoned by post-conviction counsel, this Court should summarily reject Lyons' claims of ineffective appellate assistance without giving Lyons a full opportunity to develop those claims before the Motion Court. Respondent's Brief, p. 17-27. It is interesting to note that the State urges such summary rejection of Mr. Lyons' claims while at the

same time repeatedly faulting Lyons for not having thus far further developed his claims in proper evidentiary form. Respondent's Brief, p. 17, fn. 4, 24, 25, 27.

There is nothing in this Court's jurisprudence regarding abandonment to support the summary rejection of claims suggested by the State. To the contrary, in developing its response to the situation of abandonment, this Court followed the recommendation made at that time by the State, and directed that, to the extent that a case of abandonment has been made, the proper remedy is to have the matter fully developed in the motion Court by causing new counsel to be appointed so that counsel may fully discharge his/her Rule 29.15(e) duties by amending the Rule 29.15 Motion and supplementing the record. ***Luleff v. State***, 497-498.

Counsel for Mr. Lyons fully believes that there is already ample evidence before this Court to cause it to grant relief to Mr. Lyons by setting aside Mr. Lyons' convictions and sentences. However, if this Court does not find the record before it powerful enough to immediately grant this ultimate relief, it should remand the matter to the Motion Court, directing that the

Motion Court permit the reopening of the Rule 29.15 proceedings, to permit further amendment of the pleadings, and necessary evidentiary proceedings in connection therewith.

THE LAW AND THE FACTS FULLY SUPPORT MR. LYONS' SUBSTANTIVE DUE PROCESS CLAIMS REGARDING HIS MENTAL INCOMPETENCE, AND ENTITLEMENT TO RELIEF, THE STATE'S MISAPPREHENSION OF LAW AND FACT NOTWITHSTANDING

In its Respondent's Brief, the State accuses Lyons of misapprehending the applicable law and selectively and self-servingly accounting the facts. Respondent's Brief, p. 23, 24-26. A fair review of the law and facts clearly show it is the State, and not Lyons, that has things wrong.

1. The State fails to account for the law related to the substantive due process aspect of the competency issue, concentrating strictly on the procedural due process aspect of the matter

When a criminal defendant like Lyons challenges that he was not competent during criminal proceedings, two separate issues emerge: the first is the substantive due process question of whether he was in fact incompetent

during the proceedings, the other is the procedural due process question of whether the lower court's process for determining competence was adequate. ***Pate v. Robinson***, 383 U.S. 375, 378 (1966); ***Drope v. Missouri***, 420 U.S. 162, 171-173 (1975); ***Reynolds v. Norris***, 86 F.3d 796, 799-800 (8th Cir. 1996).

In its brief, the State attempts to blur the line between the substantive and procedural due process parts of the competency issue by arguing the entire matter from a procedural due process point of view. Essentially, the State's contentions are that the process conducted by the Trial Court was adequate, that the determination of competence made by the Trial Court was a legitimate one based on the facts before the Trial Court at the time the determination was made, and that that factual determination should be unassailable due to the deference it is allegedly owed. Respondent's Brief, p. 23-24. The State's notions are deficient in nearly every possible way. The State's notions are plainly incorrect where, as here, a substantive due process challenge is also raised.

The mental competence of a defendant is a *sine qua*

non of the criminal justice process, because the placing on trial a person who is not competent amounts to plain error, resulting in manifest injustice or a miscarriage of justice. ***Pate v. Robinson***, 384; ***Cooper v. Oklahoma***, 517 U.S. 348, 354, fn. 4 (1996); ***Reynolds v Norris***, supra.

> Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so. An erroneous determination of competence threatens a fundamental component of our criminal justice system-the basic fairness of the trial itself. ***Reynolds v. Norris***, supra, quoting ***Cooper v. Oklahoma***, 353.

The substantive right to be tried while competent is a right which cannot be deemed waived. ***Pate v. Robinson***, supra; ***Silverstein v. Henderson***, 706 F.2d 361, 367 (2nd Cir. 1983); ***Sena v. New Mexico State Prison***, 109

F.3d 652, 654 (10th Cir. 1997); ***Medina v. Singletary***, 59 F.3d 1095, 1111 (11th Cir. 1995).

At whatever stage in the proceedings a defendant challenges that his substantive right to trial while competent was abridged, he has the burden of proof regarding his incompetence by a preponderance of the evidence; however, since this is a question of ultimate truth, and not of procedural nicety, the defendant is not restricted to only those facts which were before the Trial Court, but may resort to all available, relevant facts to prove he was incompetent at time of trial. ***Cooper v. Oklahoma***, 355-368; ***Pate v. Robinson***, supra; ***Silverstein v. Henderson***, supra; ***Sena v. New Mexico State Prison***, supra; ***Medina v. Singletary***, supra.

2. The State's misapprehension of the law, and its witting or unwitting oversights, lead it to ignore the lion's share of the weighty evidence of Lyons' incompetence

In its brief, the State accuses counsel for Mr. Lyons of "merely rehashing the evidence, purely from a defense point of view...." Respondent's Brief, p. 23. In truth, it is the State which is selective in its

accounting of the facts.

The State's misapprehension of the law leads it to urge that this Court ignore some of the strongest evidence of Mr. Lyons' incompetence, the expert conclusions reached by Dr. John Wisner, M.D. after his comprehensive evaluation of Mr. Lyons and all of the records. L.F. 40-41; Respondent's Brief, p. 26-27. It is true enough that Dr. Wisner conducted his evaluation some five years after the time of trial. L.F. 40-41. Nevertheless, as noted already above, substantive due process principles require that this Court give serious consideration to all evidence of Mr. Lyons incompetence, including conclusions like those from Dr. Wisner, regardless of whether the Trial Court heard that evidence. ***Cooper v. Oklahoma***, 355-368; ***Pate v. Robinson***, supra; ***Silverstein v. Henderson***, supra; ***Sena v. New Mexico State Prison***, supra; ***Medina v. Singletary***, supra.

Consideration also must be given to other strong evidence of Mr. Lyons' incompetence which the State, whether by design or oversight, completely fails to mention, particularly

- the expert opinion, rendered by Missouri Department of Mental Health Dr. Bruce Harry, M.D., in a letter to Trial Counsel on the eve of trial, that Mr. Lyons was incompetent to proceed to trial (L.F. 27-28), and
- the opinion by Trial Counsel that Mr. Lyons was not competent at time of trial (L.F. 30-31).

The State also soft-pedals or omits the strong evidence of Mr. Lyons incompetence which was plainly before the Trial Court at time of trial, including

- Mr. Lyons' long history of mental illness, including suicide attempts (Tr. 894-896, 923-977);
- Dr. Harry's original report finding Mr. Lyons incompetent to proceed to trial due to effects from Mr. Lyons' life-long mental illness (T.L.F. 353-362);
- Mr. Lyons' unquestioned incompetence and commitment to the State Hospital for better than two years (T.L.F. 2-7);
- the opinions by defense expert Dr. Phillip Johnson, Ph.D. that Mr. Lyons suffered from the

chronic mental disease of delusional depression (2/23/95 Tr. 48, 70), that Mr. Lyons suffered with hallucinations (2/23/95 Tr. 60-61), and that Mr. Lyons was not competent to proceed to trial because he was not capable of assisting his counsel (2/23/95 Tr. 67).

And, the State fails to note the strong provisos placed upon the opinion of competence rendered by State psychologist, Dr. William Holcomb, Ph.D., including Holcomb's conclusions

- that Mr. Lyons suffered mental illness complete with delusions and hallucinations (2/23/95 Tr. 24, 27);
- that Mr. Lyons was only "minimally" competent (2/23/95 Tr. 27);
- that Mr. Lyons' minimal competence could be had only with proper medication (2/23/95 Tr. 6, 21); and
- that Mr. Lyons should be hospitalized pending trial (2/23/95 Tr. 33-35).

It is significant that the State is never so bold as to venture that Lyons was actually competent at the time

of his trial. That is certainly wise since the weight of all available evidence, including the opinions of two medical doctors, is that Lyons was incompetent at the time of his trial.

3. The law and the facts make this error plain, thus warranting relief, even in post-conviction proceedings

Relying upon its flawed notions about the law, and ignoring most of the facts, the State erroneously argues that direct appeal counsel cannot be faulted for not raising Mr. Lyons' incompetence on appeal. Respondent's Brief, p.

Even Mr. Lyons' appellate counsel himself disagrees with the State, admitting his error (L.F. 33-34).

As already accounted above, and in Mr. Lyons' Appellant's Brief, the evidence of Mr. Lyons' incompetence is strong, and thus the error of his being forced to trial is plain and obvious. ***Cooper v. Oklahoma***, 355-368; ***Pate v. Robinson***, supra; ***Silverstein v. Henderson***, supra; ***Sena v. New Mexico State Prison***, supra; ***Medina v. Singletary***, supra. Since the error here was plain, this is an issue upon which Lyons

clearly should have prevailed had it been brought on direct appeal, and Lyons' appellate counsel was prejudicially ineffective for failing to so raise the issue. ***Strickland v. Washington***, 466 U.S. 668, 688 (1984); ***Carter v. Bowersox***, 265 F.3d 705, 715-717 (8th Cir. 2001); ***Middleton v. State***, 80 S.W.3d 799, 808 (Mo.banc 2002); ***State v. Barnard***, 14 S.W.3d 264, 266-267 (Mo.App.W.D. 2000). Because Mr. Lyons was forced to trial while incompetent, this Court can and should rightly find that prejudicial ineffective appellate assistance occurred, and can and should, summarily, set aside Mr. Lyons' convictions, and order the matter remanded to the Trial Court for further proceedings. ***Cooper v. Oklahoma***, 355-368; ***Pate v. Robinson***, supra; ***Silverstein v. Henderson***, supra; ***Sena v. New Mexico State Prison***, supra; ***Medina v. Singletary***, supra; ***State v. Barnard***, 267.

THE STATE IGNORES OBVIOUS SHORTCOMINGS, AND VIOLATIONS OF PROCEDURAL DUE PROCESS, WHICH PROHIBIT DEFERENCE TO THE TRIAL COURT'S COMPETENCY DETERMINATION

The State contends that the Trial Court's competency determination process tracked precisely the processes

approved by this Court in other cases, and thus that that determination should be entitled to deference. Respondent's Brief, p. 23-24. The State is flatly wrong on the facts and on the law.

It has already been noted above that the Trial Court's determination suffers the fatal, substantive flaw that, in light of all of the facts now available, the determination of competence is clearly incorrect. And, to the extent that the State raises the excuse that, at time of trial, the Trial Court was somehow unaware of some of the facts which established Mr. Lyons' incompetence, the Trial Court itself, and the woefully inadequate process which the Trial Court employed for garnering facts, were to blame.

1. The Trial Court never engaged Mr. Lyons himself on the issues of competence, and thus never afforded itself the opportunity to see Lyons' obvious mental deficiencies

In every case cited by the State in which the Appellate Courts of this State have upheld a Trial Court's finding regarding a defendant's mental competence, the Trial Court had itself supported its

finding by engaging in an on-the-record interaction with the defendant during which the defendant specifically expressed his understanding of the proceedings and ability to assist with his defense. Respondent's Brief, p. 23-24; ***State v. Hampton***, 959 S.W.2d 444, 450 (Mo.banc 1997); ***State v. Wise***, 879 S.W.2d 494, 507 (Mo.banc 1994); ***State v. Petty***, 856 S.W.2d 351, 354 (Mo.App.S.D. 1993).

In this case, on the other hand, during the time prior to and during trial, the Trial Court **never** engaged Mr. Lyons in such an interaction, never so much as causing the Mr. Lyons to speak on the record before or during trial. Thus, the Trial Court never afforded itself an opportunity to assess Mr. Lyons ability, or more properly inability, to understand the proceedings and assist with his defense.

For many reasons, it is clear that, had the Trial Court engaged Mr. Lyons in such a fashion, Mr. Lyons' incompetence would have played out for the record. Foremost among those reasons is that such a demonstration of Mr. Lyons' incompetence actually did begin to occur at sentencing, when the Trial Court

finally did inquire of Mr. Lyons whether Lyons' understood the proceedings against him, and Mr. Lyons responded simply and poignantly that he did not (Tr. 1039-1043). No further record than that was made because the Trial Court chose to end its inquiry with that initial exchange (Tr. 1039-1043).

2. The Trial Court made its competency determination a year before trial based upon a psychologist's conditional opinion of medicated competence, and then never followed up to find out that the conditions set by the psychologist were not met

There are additional deficiencies in the Trial Court's process here which negatively distinguish it from the proper processes previously upheld by this Court.

In this case, the only evidence in the record supporting the Trial Court's finding of competence was the conditional opinion of competence offered by Dr. William Holcomb, Ph.D. better than a year before trial. At that time, red flags of incompetence, already discussed above, were raised by Holcomb, to wit

- that Mr. Lyons suffered life-long mental illness

complete with delusions and hallucinations (2/23/95 Tr. 24, 27);

- that Mr. Lyons was only “minimally” competent (2/23/95 Tr. 27);
- that Mr. Lyons’ minimal competence could be had only with proper medication (2/23/95 Tr. 6, 21); and
- that Mr. Lyons needed to continue to be hospitalized pending trial (2/23/95 Tr. 33-35).

At the time the Trial Court made its finding of competence, better than a year before trial (T.L.F. 7), it perilously based its finding solely upon this highly conditioned opinion of medicated competence rendered by Holcomb. Since no record was ever made that Holcomb, a psychologist, was qualified to render such a medical opinion, it was at best highly questionable for the Trial Court to base its competency determination, even at that time, upon such conditional opinions rendered by this non-medical doctor (T.L.F. 7). But even if the Trial Court’s year-before-trial determination can be defended, the Trial Court cannot be defended for never revisiting the matter to inquire and determine whether

the conditions set forth by Holcomb were ever met.

Of course, we now know that, had the Trial Court revisited the matter at time of trial, it would have learned that Mr. Lyons' then treating medical doctor, Psychiatrist Dr. Bruce Harry, M.D., believed Mr. Lyons to be incompetent (L.F. 27-28). We also know that, had a complete evaluation of Mr. Lyons' condition, like that conducted recently by Dr. Wisner, been ordered at time of trial, it would have been determined that the medications being administered to Mr. Lyons, while controlling Lyons' suicidal tendencies, actually profoundly exacerbated Lyons' inabilities to understand the proceedings and to assist with his defense (L.F. 40-41).

To the extent that the Trial Court did not have this necessary information about Mr. Lyons' incompetence, the fault for that lies with the woefully inadequate competency determination process employed by the Trial Court. This process did not come anywhere close to comporting with the requirements of procedural due process. ***Drope v. Missouri***, 181; ***Reynolds v. Norris***, supra.

3. The State cannot shift the blame for the inadequacies of the Trial Court's processes

The State wrongly tries to shift blame for this fiasco from the Trial Court to the Trial Counsel. To effect this legerdemain, the State first posits that the Trial Court was not required to conduct a trial-time inquiry about competence unless Lyons' condition somehow changed from that at the time of the original competency determination. Respondent's Brief, p. 25-26. The State then claims that fault, if any, would consequently rest with Trial Counsel for not coming forward with any such change in Lyons' condition. Respondent's Brief, p. 26.

In making such an argument, the State once again totally ignores the substantive due process component of the competency issue.

But even if the questions here were solely upon issues of procedural due process, the law and facts do not support these positions taken by the State.

The law of procedural due process required that the Trial Court's active vigilance, even *sua sponte*, throughout the proceedings. ***Drope v. Missouri***, 181; ***Reynolds v. Norris***, supra.

The facts already before the Trial Court, without more, demanded that vigilance be exercised by the Trial Court, but that vigilance was not exercised. The fact is that the Trial Court's year-before-trial competency determination was already an inherently tenuous one. The Trial Court premised its competency determination, against strong evidence of incompetence, solely on Dr. Holcomb's opinion that Mr. Lyons could only be minimally competent, and then only if certain conditions were met, those being correct medication and continued hospitalization. Thus, the very evidence of minimal, conditional competence upon which the Trial Court premised its competency determination already alerted the Court to the necessity for followup monitoring and reassessment. That Trial Counsel could have been more insistent, or even contemptuous, in their urgings that the Trial Court reconsider the matter, necessarily and improperly presumes that the Trial Court did not understand the plain import of the evidence already before it. What is more fair to say is that, built into foundation of the Trial Court's original competency determination was an inherent, bona fide doubt about Mr.

Lyons' continued competence. Because that bona fide doubt already existed, it was already the duty of the Trial Court to keep its finger on the pulse of the matter. ***Pate v. Robinson***, 385; ***Reynolds v. Norris***, 800-801. Thus, the fault for the Trial Court's failure to discharge this responsibility belonged to the Trial Court alone.

CONCLUSION

WHEREFORE, in light of the foregoing, and in light of the premises set forth in his Appellant's Brief, Mr. Lyons prays that this Honorable Court reverse the judgment of the Motion Court, and remand the matter with directions either that the Motion Court reopen his Rule 29.15 proceedings to raise the issues described in his proposed amended pleading (L.F. 12-45), or that the Mr. Lyons' convictions and sentences be set aside. Mr. Lyons additionally prays for any other and further relief which the Court may deem just and proper under the circumstances.

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

I do hereby certify that the foregoing has been prepared in WordPerfect 9 format, which reports a content of 4,557 words. A diskette containing this brief has been provided, and has been scanned for viruses with none having been detected.

FREDERICK A. DUCHARDT, JR.

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing was mailed this 8th day of January, 2004 to the following

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